

OGC 73-0780

3 May 1973

MEMORANDUM FOR THE RECORD

SUBJECT: May 1973 Meeting of ICRC

1. The Interagency Classification Review Committee met yesterday at 1000 hours in the Roosevelt Room of the White House with Archivist James Rhoads the new Acting Chairman presiding. Mr. James O'Neill, the Deputy Archivist of the United States, served as the Archivist member of the Committee. State was represented by Mark Feldman; Justice by Robert Dixon, the newly appointed Assistant Attorney General, Office of Legal Counsel; Defense by Robert Andrews and AEC by Charles Marshall. There was no representative from the NSC Staff.

2. Mr. Rhoads began the meeting by paying tribute to the work of Chairman Eisenhower. He said his own appointment is a temporary one and he hopes and expects a permanent successor will be found soon. Until that time he intends to do all he can to make the Executive Order work and he hoped and assumed all members had a similar determination. He suggested also that members should regard themselves not merely as representatives of their agencies but as watchguards of the entire government and as guardians of the public interest. He said he and Dick Tufaro had met with Frederic Malek, Deputy Director of OMB, who assured Rhoads of the President's continuing interest and support. He announced that the Committee is now moving out of the White House and into OMB. (I assume this means that Rhoads will report to Malek rather than to the successor to Haldeman or another White House staffer.) Mr. Rhoads felt that the move into OMB indicates more, rather than less, top level interest in the work of the Committee. He announced also the resignation from federal service of Dave Young and paid tribute to Young's service on the Committee. He expressed pleasure that Dick Tufaro will continue his work "at least for a period of time." He expressed a welcome to Mr. Dixon, Justice's new member who was attending his first ICRC meeting.

3. Mr. Rhoads announced that ICRC has been asked to testify on 9 May before the Muskie Committee. Mr. Dixon interjected to report that the Attorney General had testified on 10 April before a combined committee chaired by Senators Muskie and Ervin. The committee's jurisdiction involved executive privilege and government secrecy but Mr. Kleindienst had testified only on executive privilege. He had been scheduled to return on 9 May to testify on the remaining area but now it is contemplated that Attorney General Richardson will return to testify before that committee in June. It developed in the conversation that the ICRC representative will testify on 9 May because that time has now become available because of the postponement of the appearance of the Attorney General. Rhoads and Tufaro apparently are preparing Mr. Rhoads' testimony. It will report statistical progress under the Order; it will explain the work and role of ICRC and will set out the philosophical advance of E.O. 11652 over E.O. 10501. A draft of the statement is to go to all members by this Friday, 4 May, and comments are welcomed. The testimony also is to have OMB approval.

4. Mr. Rhoads then addressed himself to item 3 on the Committee agenda, namely the proposal by AEC to amend the Executive Order so as to divorce the exemption authority and Top Secret authority. (Under the Order only officials authorized to classify at Top Secret may exempt from automatic declassification any classified document.) This was discussed at some length. The AEC position was that at AEC Top Secret authority is exercised with great restraint, the exemption authority less so and the latter is performed by officials acting pursuant to so-called exemption guidelines which AEC has issued. He felt exemption would be performed with more restraint and indeed fewer documents would be exempt if an amendment were adopted. Defense and several others were prepared to live with the Executive Order as is. They felt the present system is costly but they were prepared to accept it. Several, including Mr. Houston, indicated the present situation is satisfactory so long as broad exemption guidelines are permissible. In the absence of such guidelines, CIA would have to increase its number of Top Secret classifiers significantly. Mr. Ulman, who attended with Mr. Dixon of Justice, opted for separation of the two authorities. Mr. Feldman also supported divorce. Chairman Rhoads suggested it might be well to defer solution until the first quarterly reports are in which would show at least an estimate or approximation of the percentage of documents being exempted by various departments. He wondered if agencies

could somehow tighten up their exemption practices. He wound up appointing an interagency group to study this general subject in broad terms. The group's charter is to study the most effective ways to hold to a minimum the exemption of documents. This would include use of guidelines, divorce of Top Secret authority from exemption authority and any other aspects. He also asked that the group be chaired by a department which does not use guidelines and therefore asked that the State representative be chairman.

5. Mr. Rhoads passed out a brochure entitled "Know Your Rights to Mandatory Review to Classified Documents", which is proposed as an ICRC handout to the public. A copy is attached. All comments are invited and we are asked to submit our comments in not more than two weeks. It was not suggested that the Committee should decide on the desirability of issuing the brochure; that decision apparently having been made by Rhoads or Tufaro or both. We of course can object to its issuance if we want to.

6. The Chairman then moved to item 5 of the agenda concerning automatic declassification under the old Executive Order. The problem is that in some quarters the Order is being interpreted to the effect that because Group 3 information under E.O. 10501 is excluded from the General Declassification Schedule of E.O. 11652, the information in that Group does not automatically declassify at all. Tufaro suggested that such surely was not the intent and indeed if that is a correct reading of the repeal of 10501, it would mean that 11652, in this area at least, is retrogressive. Tufaro offered as a solution to this problem a document entitled "Letter of Interpretation" to be signed by Rhoads as Acting Chairman which would provide that Group 3 materials would continue to automatically declassify under Section 4(A)(3) of E.O. 11652. Most of the Committee felt this would be a satisfactory solution. But Defense is concerned that the letter is legally incorrect because in their view E.O. 10501 is totally dead and has no continuing operation. In view of this, Justice was asked to determine whether a letter such as the proposed one could be the device by which this problem is solved.

7. Mr. Rhoads asked Mr. Houston to report on our progress on the AP appeal. Mr. Houston reported our actions of sanitizing and declassifying a number of documents and requesting other departments to concur in additional declassification.

8. Mr. Rhoads requested that all members play a part in their agencies' communications to people who request declassification to be sure that replies correctly inflect the spirit and tone of the Executive Order.

9. The testimony of Harding Bancroft of the New York Times before the Senate Subcommittees on Intergovernmental Relations, Separation of Powers, Administrative Practices and Procedure on 11 April 1973 recited the Times' experience on the Executive Order to date. His testimony was highly critical of the executive branch, including specifically CIA. A copy is attached. Mr. Houston commented in this regard that he knows Harding Bancroft rather well and he is certain that Bancroft realizes the matter is not nearly as simple as he suggested in his testimony. He indicated we would forward any comments on Bancroft's testimony. Tufaro suggested we might want to cover this in our comments on Rhoads' draft testimony.

10. Mr. Rhoads then went to the subject of the ICRC procedures, which have been approved by the Committee subject to the resolution of the question of the Committee's jurisdiction to hear appeals involving intelligence sources and methods. Mr. Houston indicated we had prepared a paper on that subject and we have also discussed the problem informally with the Department of Justice. It was left that we would proceed with this with Justice, or otherwise as we desire. But Mr. Rhoads said he would like to have action go forward so that the procedures can be approved at the June meeting. Mr. Houston said he saw no difficulty in accomplishing this.

11. Mr. Rhoads reported an invitation from the National Classification Management Society for the Committee to take part in a meeting the Society is conducting in Washington on 17 July. In the following discussion it developed that both Defense and AEC have had experience with the group. Defense has found it to be a good group, formed essentially of Defense contractors. AEC has found it to be somewhat civil-liberties minded (in a harassing sense) and AEC has dealt with it very cautiously. It was suggested that ICRC should participate in low key and only one representative should appear. The ICRC representative was not named and I assume it will be either Tufaro or Rhoads.



Associate General Counsel

Attachments

cc: ES/CIA Management Committee

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